



# MASSACHUSETTS DEPARTMENT OF REVENUE

## PERSONAL INCOME TAX

### NON-RESIDENTS FROM OTHER COUNTRIES. EFFECT OF TAX TREATY

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#### FACTS:

Taxpayer Jones is a resident and citizen of a country which does not have a tax treaty with the United States. Taxpayer Smith is a resident and citizen of a country which has a tax treaty with the United States. During the taxable year, Jones and Smith were employed by Able Corporation in Massachusetts where they worked together on a three-month research project. Each received \$9,000 for working on the project. They received no other income while in the United States and returned to their respective countries immediately upon completion of the project.

#### ISSUE 1:

Is the compensation received by Taxpayer Jones, a non-resident from a country without a tax treaty with the United States, subject to Massachusetts income tax?

#### ISSUE 2:

Is the compensation received by Taxpayer Smith, a non-resident from a country with a tax treaty with the United States, subject to Massachusetts income tax?

#### DISCUSSION:

Massachusetts income tax is imposed upon any Massachusetts source income earned by a non-resident. G. L. c. 62, § 5A(a). Compensation paid for any employment performed in Massachusetts is Massachusetts source income. Generally, non-residents from other countries are taxed like non-residents from other states. Thus, under the facts above, Jones' compensation is taxable Massachusetts source income.

However, where Massachusetts source income received by a non-resident from another country is exempt from federal taxation because of a tax treaty to which the United States is a party, that income will also be exempt from Massachusetts taxation. IRC § 894(a); 830 CMR 2.05(4). This is because income which is not included in federal gross income will not be included in Massachusetts income for tax purposes unless specifically added by chapter 62 of the General Laws. G. L. c. 62, § 2(a).

Since each country's tax treaty with the United States is unique, Taxpayer Smith should consult his national revenue service, consulate or employer to find out whether his country's treaty affects how his income will be taxed.

#### DIRECTIVE 1:

The compensation received by Taxpayer Jones, a non-resident from a country without a tax treaty with the United States, is subject to Massachusetts income tax. He must report the income on a Massachusetts non-resident return, Form 1-NR.

#### DIRECTIVE 2:

The compensation received by Taxpayer Smith, a non-resident from a treaty country, is subject to Massachusetts income tax unless it is exempt from federal taxation under the terms of the treaty between his country and the United States. If Smith's income is taxable, he must report it on the Massachusetts non-resident return, Form 1-NR. If his income is tax exempt, he will not be required to file a Massachusetts tax return.

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# D O R D I R E C T I V E

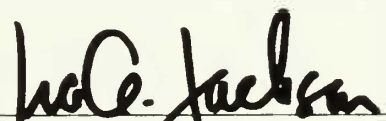
## PROCEDURES FOR NON-RESIDENTS FROM TREATY COUNTRIES WHOSE INCOME FROM EMPLOYMENT IS TAX EXEMPT

Where the compensation paid to a non-resident from a treaty country is tax exempt, it is not subject to federal or Massachusetts withholding. IRC § 1441(c); G. L. c. 62B, § 2. The Internal Revenue Service requires non-resident employees from other countries who claim an exemption from withholding to file U.S. Form 1001 with their employers. Treas. Reg. § 1.1441-6(c). This form enables those employees to notify employers that a treaty exempts their income from taxes. In lieu of this form, some employers will accept an affidavit or other written affirmation of tax-exempt status. Form 1001 or similar statement should be filed with an employer prior to commencing employment in order to avoid the withholding of taxes. This filing will suffice for exemption from Massachusetts withholding as well.

Where income is exempt by tax treaty but taxes have been withheld by an employer, a non-resident must file a Massachusetts non-resident income tax return, Form 1-NR, with the Massachusetts Department of Revenue to claim a refund of the amounts withheld. The state copy of the W-2 Form indicating that taxes have been withheld and documentation of the treaty exemption should be attached to the return.

**REFERENCE:** G. L. c. 62, § § 2(a), 5A(a); G. L. c. 62B, § 2; IRC § § 894(a), 1441(c); 830 CMR 2.05(4); Treas. Reg. § 1.1441-6(c).

01 June 1987

  
Ira A. Jackson  
Commissioner of Revenue

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This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 C.M.R. § 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives and TIRs must be considered, and Department personnel and taxpayers are cautioned against reaching the same conclusions in other cases unless the facts, circumstances and issues are substantially the same.